



[Billing Code: 4810–31–P]

## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB–2013–0008]**

**[Notice No. 139]**

**RIN: 1513–AC02**

### **Proposed Establishment of the Upper Hiwassee Highlands Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 692-square mile “Upper Hiwassee Highlands” viticultural area in Cherokee and Clay Counties, North Carolina, and Towns, Union, and Fannin Counties, Georgia. The proposed viticultural area does not lie within or contain any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Please send your comments on this notice to one of the following addresses (please note that TTB has a new address for comments submitted by U.S. mail):

- Internet: <http://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB–2013–0008 at “Regulations.gov,” the Federal e-rulemaking portal);
- U.S. Mail: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- Hand delivery/courier in lieu of mail: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments that TTB receives about this proposal at <http://www.regulations.gov> within Docket No. TTB–2013–0008. A link to that docket is posted on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 139. You also may view copies of this notice, all related petitions, maps, and other supporting materials, and any comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the

establishment or modification of American viticultural areas and lists the approved American viticultural areas.

### Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

### Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area.

Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas.

Petitions to establish a viticultural area must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;

- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

### **Upper Hiwassee Highlands Petition**

TTB received a petition from Eric Carlson, owner of Calaboose Cellars, on behalf of himself and members of the Vineyard and Winery Operators of the Upper Hiwassee River Basin group, proposing the establishment of the approximately 690-square mile “Upper Hiwassee Highlands” American viticultural area. The proposed viticultural area is located in portions of Cherokee and Clay Counties, North Carolina, and Towns, Union, and Fannin Counties, Georgia. The petition states that 26 commercial vineyards are located throughout the proposed viticultural area, growing approximately 54 acres of French-American hybrids, American grape varieties, and Vitis vinifera. According to the petition, present vineyard operators estimate they will expand their plantings by an additional 75.5 acres within the next 5 years. Two new vineyards are also in the

planning stages and are expected to add an additional 16 acres to the total acreage by the end of 2013. Five wineries operate within the proposed viticultural area, and 4 additional wineries are in the planning stages and expected to open by 2014.

According to the petition, the distinguishing features of the proposed Upper Hiwassee Highlands viticultural area include topography, temperature, and soils. Unless otherwise noted, all information and data pertaining to the proposed viticultural area contained in this document are from the petition for the proposed Upper Hiwassee Highlands viticultural area and its supporting exhibits.

#### Name Evidence

The proposed Upper Hiwassee Highlands viticultural area is located in the southern Appalachian Mountains in portions of southwestern North Carolina and northwestern Georgia. According to the petition, “highland” and “highlands” are traditional terms used to describe the high, rugged, regions of the southern portion of the Appalachians and are terms used by businesses and organizations within the proposed viticultural area. For example, the Southern Highland Craft Guild sponsors juried memberships to craftspeople in counties within the Appalachian Mountain areas of nine States, including all five counties within the proposed Upper Hiwassee Highlands viticultural area. The Southern Highlands Attractions organization hosts a web page featuring travel attractions in the Appalachian regions of Virginia, Tennessee, North Carolina, and Georgia and includes locations within the proposed viticultural area (see [www.southernhighlands.org](http://www.southernhighlands.org)). Additionally, an Internet search by TTB found the

Blue Ridge Highlander online magazine and travel guide, which features events and entertainment venues within the Blue Ridge Mountain region, including the annual Taste of the Southern Highlands event in Hiawassee, Georgia, which is located within the proposed viticultural area (see [www.blueridgehighlander.com](http://www.blueridgehighlander.com).)

Because the word “highlands” applies to a very broad region of the Appalachian Mountains, the petitioner chose to add the term “Upper Hiwassee” to the name of the proposed viticultural area to distinguish it geographically from the larger Appalachian region. The term “Upper Hiwassee” refers to the proposed viticultural area’s location along the upper portions of the Hiwassee River, from the river’s headwaters in Towns County, Georgia, to the Hiwassee Dam on Hiwassee Lake in Cherokee County, North Carolina. The portion of the river that flows north of the dam, outside the proposed viticultural area, is often referred to as the “lower” river.

The name “Hiwassee” and its variant “Hiawassee” are used throughout the region of the proposed viticultural area. The town of Hiawassee, Georgia, is located within the proposed viticultural area in Towns County and is near the headwaters of the Hiwassee River. The Hiwassee River Watershed Coalition is a nonprofit organization whose mission is to facilitate water quality in streams and lakes “throughout the upper Hiwassee River watershed within Cherokee and Clay counties in North Carolina and Towns and Union counties in north Georgia.” (See [www.hrwc.net](http://www.hrwc.net)). The Hiwassee River Basin Directory is an online source of news and information for southwestern North Carolina, northwestern Georgia, southeastern Tennessee, including the region within the proposed Upper

Hiwassee Highlands viticultural area (see [www.hiwassee.us](http://www.hiwassee.us)). The Hiwassee River Valley Kennel Club is located in Murphy, North Carolina, within the proposed viticultural area. Finally, a search by TTB of the USGS's Geographical Names Information System (GNIS; <http://geonames.usgs.gov/index.html>) found 13 locations and populated places within the proposed viticultural area that use the name "Hiwassee," including a church and a mountain ridge in Towns County, Georgia, and a school, fire department, dam, and cemetery in Cherokee County, North Carolina.

#### Boundary Evidence

The proposed Upper Hiwassee Highlands viticultural area is a broad basin surrounded by high mountains. The Hiwassee River flows in a northwesterly direction through the proposed viticultural area, and the proposed boundary approximates the boundary of the watershed for the upper portion of the river.

The northern, eastern, and southern portions of the proposed boundary follow the 2,400-foot elevation contour line, which was chosen because the highest vineyards within the proposed viticultural area are planted at elevations between 2,000 and 2,400 feet; above 2,400 feet, the climate and terrain is generally too steep and cold for commercial viticulture. The 2,400-foot elevation contour line also separates the lower elevations of the upper Hiwassee River watershed from the higher elevations of the Unicoi and Snowbird Mountains to the north, the Tusquitee and Nantahala Mountains to the east, and the Blue Ridge Mountains to the south.



The western portion of the proposed boundary follows the boundary between Union and Fannin Counties, in Georgia, and a series of roads and straight lines drawn between points on the USGS maps. The proposed western boundary separates the upper Hiwassee River watershed of the proposed viticultural area from the Ocoee River watershed, as well as from the watershed for the lower portion of the Hiwassee River.

#### Distinguishing Features

The distinguishing features of the proposed Upper Hiwassee Highlands viticultural area include topography, temperature, and soils.

#### *Topography*

As previously noted, the proposed Upper Hiwassee Highlands viticultural area is a broad basin that encompasses the watershed for the upper portion of the Hiwassee River. The Hiwassee River has its headwaters in the southeast portion of the proposed viticultural area, near the town of Hiawasse, Georgia. The river flows northwesterly, exiting the proposed viticultural area at the Hiwassee Dam before continuing into Tennessee, where it joins with the Ocoee River and, eventually, the Tennessee River. Within the basin of the proposed viticultural area are mountains interspersed with broad valleys. The largest of these valleys runs southwest to northeast between the towns of Martins Creek and Andrews, North Carolina, along a geological feature known as the Murphy Belt Sequence. Most of the vineyards within the proposed viticultural area are planted in the valleys or on the gentle slopes of the lower elevations of the mountains.

The proposed Upper Hiwassee Highlands viticultural area is bordered to the north, east, and south by higher, steeper mountains interspersed with narrow, deeply incised gorges. To the west, below the Hiwassee Dam, are a series of lower ridges, mountains, and deep, narrow river gorges that form the watershed for the Ocoee River and the lower portion of the Hiwassee River. The table below compares the mean elevation within the proposed viticultural area to the elevations of the surrounding regions.

<b>Table 1: Comparison of Elevation</b>		
<b>Region</b>	<b>Direction from the proposed viticultural area</b>	<b>Mean Elevation (feet)</b>
Proposed Upper Hiwassee Highlands viticultural area	N/A	1,974
Unicoi and Snowbird Mountains	North	3,303
Valley River and Tusquitee and Nantahala Mountains	East	3,335
Blue Ridge Mountains	South	2,898
Ocoee River and lower Hiwassee River watersheds	West	1,849

In addition to having lower elevations than most of the surrounding regions, the proposed Upper Hiwassee Highlands viticultural area also has significantly shallower slope angles. According to the slope angle analysis included in the petition, approximately 70 percent of the slopes within the proposed viticultural area have angles between 0 and 15 degrees, which is level enough to prevent erosion and gentle enough for safe and convenient manual and mechanical cultivation. Only 16 percent of the slopes within the proposed viticultural area have slope angles greater than 20 percent. Slope angles greater

than 20 degrees are unsafe for mechanical cultivation and make even manual vineyard work difficult.

To the north of the proposed viticultural area, within the Unicoi and Snowbird Mountains, only 20 percent of the slopes are less than or equal to 15 degrees, and 62 percent are at angles greater than 20 degrees. To the east, within the Valley River and the Tusquitee and Nantahala Mountains, only 23 percent of the slopes have angles less than or equal to 15 degrees, and 58 percent of the slopes have angles greater than 20 degrees. To the south, within the Blue Ridge Mountains, 30 percent of the slopes have angles less than or equal to 15 degrees, and 47 percent of the slopes are over 20 degrees. To the west, in the watersheds of the Ocoee River and lower Hiwassee River, 63 percent of the slope angles are less than or equal to 15 degrees, and 21 percent of the slopes have angles greater than 20 degrees.

The gentle mountain slopes and broad valleys of the proposed Upper Hiwassee Highlands viticultural area allow high amounts of solar radiation to reach the vineyards. By contrast, the surrounding regions are characterized by steep mountains and narrow, deeply incised gorges which restrict the amount of sunlight that reaches the lower, tillable mountainsides and valley floors; this effect is known as “mountain shadowing.” The table below compares the total and per-acre amounts of solar radiation accumulated within the proposed viticultural area and surrounding regions during the growing season (April through October), as measured in Watt-hours.<sup>1</sup>

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<sup>1</sup> Total Watt-hours and mean Watt-hours per acre were calculated using the Environmental Systems Research Institute’s (ESRI) Spatial Analyst Solar Radiation function. The

<b>Table 2: Comparison of Growing Season Solar Radiation Accumulation (measured in Watt-hours)</b>		
<b>Region</b>	<b>Total Solar Radiation Accumulation</b>	<b>Mean Solar Accumulation Per Acre</b>
Proposed viticultural area	$2.23 \times 10^{15}$	$5.05 \times 10^9$
North	$6.72 \times 10^{14}$	$4.11 \times 10^9$
East	$1.12 \times 10^{15}$	$4.41 \times 10^9$
South	$7.04 \times 10^{14}$	$4.34 \times 10^9$
West	$2.00 \times 10^{15}$	$4.77 \times 10^9$

As shown in the table, both the total and the per-acre solar radiation accumulation within the proposed viticultural area are greater than those of all of the surrounding regions. The contrast is greatest between the region to the north and the proposed viticultural area, with the proposed viticultural area accumulating 3.32 times the amount of total solar radiation and 23 percent more solar radiation on a per-acre basis. High levels of solar radiation promote efficient photosynthesis in the vines and speed the ripening of fruit.

### *Temperature*

The proposed Upper Hiwassee Highlands viticultural area is warmer than the surrounding regions to the north, east, and south and slightly cooler than the region to the west. Because of the wide variety of elevations both within and outside the proposed viticultural area, the petitioner used the climate data mapping system created by the PRISM Climate Group at Oregon State

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software calculates solar radiation accumulation using the latitude of the chosen location and the azimuth and elevation of the sun's track across the sky each month. Because the sun's track varies with the season, but does not change from year to year, the analysis is not tied to any specific year.

University to estimate general climate patterns for the entire region.<sup>2</sup> The climate normals used in the calculations were gathered from three weather stations within the proposed viticultural area and nine stations from the surrounding regions.<sup>3</sup> The following table shows the mean annual and growing season temperatures calculated using the PRISM mapping system. The mean July temperature was also calculated because July represents the peak of the growing season.

<b>Table 3: Comparison of Mean Temperatures</b>			
<b>Region</b>	<b>Mean Temperature (Fahrenheit)</b>		
	<b>Annual</b>	<b>Growing Season (April–October)</b>	<b>July</b>
Proposed viticultural area	53.5	64.9	73.2
North	51	61	69.7
East	50.3	61.7	69
South	51.6	62.4	70.6
West	55.9	65.3	73.8

The petitioner also used the climate data mapping system to determine the Winkler Region Classification<sup>4</sup> for the various elevations within the proposed

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<sup>2</sup> The PRISM climate data mapping system combined climate normals gathered from weather stations, along with other factors such as elevation, longitude, slope angles, and solar aspect to estimate the general climate patterns for the proposed AVA and the surrounding regions. Climate normals are only calculated every 10 years, using 30 years of data, and at the time the petition was submitted, the most recent climate normals available were from the period of 1971-2000.

<sup>3</sup> The weather stations used in the analysis are the same stations listed in Table 5.

<sup>4</sup> In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual growing degree days (GDD), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth ("General Viticulture," by Albert J. Winkler, University of California Press, 1974, pages 61–64).

Upper Hiwassee Highlands viticultural area and the surrounding regions. The following table shows the classifications.

<b>Table 4: Comparison of Winkler Region Classifications</b>			
<b>Region</b>	<b>Elevation range (feet)</b>	<b>Percentage of area</b>	<b>Winkler Region Classification</b>
Proposed viticultural area	1,503-1,700	6.1	IV
	1,700-2,300	83.6	III
	2,300-2,400	6.3	II
	2,400-3,655	4.0	I
North	2,400-3,100	45.1	II
	3,100-5,554	54.9	I
East	2,400-3,350	55.0	II
	3,350-5,492	45.0	I
South	2,400-3,200	80.6	II
	3,200-4,784	19.4	I
West	837-1,600	14.8	IV
	1,600-2,400	70.5	III
	2,400-3,200	13.1	II
	3,200-4,219	1.6	I

As shown in the table, the majority of the proposed viticultural area (84 percent) is classified as a moderately warm Region III climate in the Winkler climate classification system. The regions to the north, east, and south are classified as very cool Regions I and II. The region to the west is primarily a Region III, similar to the proposed viticultural area, although the region to the west does have a larger percentage of land in the very warm Region IV category than the proposed viticultural area.

Finally, the petition included estimates of the average freeze-free period (also referred to as the growing season) for the proposed Upper Hiwassee Highlands viticultural area and the surrounding regions. The data was collected from the period between 1971 and 2000<sup>5</sup> from the same weather stations used to determine the mean annual and growing season temperatures.

<b>Table 5: Comparison of Freeze-Free Periods</b>		
<b>Weather station location</b>	<b>Direction from proposed viticultural area</b>	<b>Average freeze-free period (days)</b>
Andrews, NC	Within	168
Athens, TN	Northwest	190
Blairsville, GA	Within	161
Cataloochee, NC	Northeast	151
Clayton, GA	Southeast	171
Copperhill, TN	West	173
Coweeta, NC	East	160
Dahlonega, GA	South	193
Franklin, NC	East	165
Helen, GA	South	183
Murphy, NC	Within	168
Oconaluftee, NC	Northeast	151

The three weather stations within the proposed viticultural area have average freeze-free periods that are generally shorter than those to the west, south, and southeast and longer than those to the northeast. Although the proposed viticultural area has freeze-free periods similar to those to the east, the

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<sup>5</sup> At the time the petition was submitted, the only climate normal available for the weather stations were from the 1971-2000 period.

area to the east still has cooler overall temperatures that distinguish the region from the proposed viticultural area.

The moderately warm temperature of the proposed Upper Hiwassee Highlands viticultural area plays a role in the varieties of grapes that are grown. According to the petition, the climate is most suitable for growing French-American hybrids, which are grown in 17 of the 26 vineyards within the proposed viticultural area and cover 49 percent of the total vineyard acres within the proposed viticultural area. Examples of these French-American hybrids include Chambourcin, Traminette, Seyval Blanc, and Vidal Blanc. American varieties, such as Norton, Catawba, and Concord, are also popular and are grown in 11 of the vineyards and cover approximately 14 percent of the total vineyard acres within the proposed viticultural area. Vitis vinifera varieties cover approximately 37 percent of the total vineyard acres within the proposed viticultural area, but according to the petition, only 1 of the 26 vineyards within the proposed viticultural area grows V. vinifera varieties exclusively, with a total of half an acre planted to Cabernet Sauvignon. By contrast, the petition notes that the V. vinifera varieties are the most common varieties grown in the surrounding regions. The Biltmore Vineyard, approximately 90 miles away in Asheville, North Carolina, is the nearest commercial vineyard to the north of the proposed viticultural area and grows V. vinifera exclusively, including Cabernet Sauvignon, Merlot, and Chardonnay. The nearest vineyards to the south, approximately 30 miles away in Dahlonega and Cleveland, Georgia, and to the west, in the Appalachian foothills of Tennessee, also primarily grow V. vinifera varieties,



along with some American varieties. Commercial viticulture is not present in the region immediately to the east of the proposed viticultural area because the region is largely covered by the Nantahala National Forest.

### *Soils*

Nineteen soil associations have been mapped within the proposed Upper Hiwassee Highlands viticultural area, and 4 of these associations cover 77 percent of the land: Tsali–Spivey–Santeetlah–Junaluska (37 percent), Saluda–Hayesville–Evard–Brevard–Bradson (20 percent), Evard–Clifton–Braddock (11 percent), and Tusquitee–Porters–Edneyville–Ashe (10 percent). These soils are derived from metasedimentary rocks such as phyllites, slates, schists, metasandstones, and marble. They are generally deep, moderately to well drained, and moderately fertile. Deep soil allows for ample root growth to support the vines and collect water and nutrients. Well drained soil prevents waterlogging, which promotes rot and fungal growth. Moderately fertile soil provides adequate nutrition to the vines without promoting excessively thick leaf canopies that provide too much shade to the grape clusters; overly shaded fruit ripens slower than fruit with more sun exposure and is more susceptible to mold and mildew.

To the north, within the Unicoi and Snowbird mountains, soils of the Stecoah–Spivey–Porters–Edneyville–Chestnut association are the most common (40 percent). To the east, within the Valley River and the Nantahala and Tusquitee Mountains, soils of the Tusquitee–Porters–Fannin–Evard–Bervard–Ashe association are the most prevalent (40 percent). The petition states that

the soil to the north and east is shallower and more at risk for erosion because of the steepness of the terrain. The petition also states that the soil in these regions is likely to contain more organic material and be more fertile than the soil of the proposed viticultural area due to the large amounts of decaying leaves and other vegetative matter dropped from trees and shrubs in these heavily forested regions.

To the south, within the Blue Ridge Mountains, and to the west, within the watersheds of the Ocoee River and lower Hiwassee River, the Tusquitee–Porters–Edneyville–Ashe association is the most common soil type (91 percent and 27 percent, respectively). The petition notes that although this soil association is also found within the proposed viticultural area, the soil to the south and west occurs on much steeper slopes and, therefore, is likely to be shallower and more at risk of erosion than the same soil series within the proposed viticultural area.

#### Summary of Distinguishing Features

In summary, the evidence provided in the petition indicates that the geographic features of the proposed Upper Hiwassee Highlands viticultural area distinguish it from the surrounding regions in each direction. To the north, east, and south, the elevations are higher, the temperatures are lower, and the most common soil associations are different from those in the proposed viticultural area, namely, Stecoah–Spivey–Porters–Edneyville–Chestnut, Tusquitee–Porters–Fannin–Evard–Bervard–Ashe, and Tusquitee–Porters–Edneyville–Ashe, respectively. To the west, the elevations are lower, the temperatures are

generally higher, and the most common soil association is Tusquitee–Porters–Edneyville–Ashe. All of the surrounding regions have steeper slope angles and accumulate less solar radiation than the proposed viticultural area.

### **TTB Determination**

TTB concludes that the petition to establish the approximately 692-square mile Upper Hiwassee Highlands viticultural area merits consideration and public comment, as invited in this notice.

### **Boundary Description**

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

### **Maps**

The petitioner provided the required maps, and they are listed below in the proposed regulatory text.

### **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If TTB establishes this proposed viticultural area, its name, “Upper Hiwassee Highlands,” will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name “Upper Hiwassee Highlands” in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the viticultural name as an appellation of origin if this proposed rule is adopted as a final rule.

TTB does not believe that the terms “Hiwassee,” “Hiwassee Highlands,” or “highlands,” standing alone, should have viticultural significance if the proposed viticultural area is established. The term “Hiwassee” has widespread use within the United States as a geographical name, used in reference to 37 locations in 5 States outside the proposed viticultural area, according to a GNIS search. The term “highlands” is commonly used both nationally and internationally as a generic term for a rugged, mountainous region. The phrase “Hiwassee Highlands” applies not only to the region within the proposed viticultural area but also to the region immediately outside the proposed viticultural area, below the Hiwassee Dam. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full name “Upper Hiwassee Highlands” as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with a viticultural area name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

## **Public Participation**

### Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed viticultural area. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils, climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Upper Hiwassee Highlands viticultural area on wine labels that include the term “Upper Hiwassee Highlands” as discussed above under **Impact on Current Wine Labels**, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed viticultural area.

### Submitting Comments

You may submit comments on this notice by using one of the following three methods (please note that TTB has a new address for comments submitted by U.S. Mail):

- Federal e-Rulemaking Portal: You may send comments via the online comment form posted with this notice within Docket No. TTB–2013–0008 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A direct link to that docket is available under Notice No. 139 on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the “Help” tab.

- U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005.

- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 139 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly indicate if you are commenting on your own behalf or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

#### Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

#### Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB-2013-0008 on the Federal e-rulemaking portal, Regulations.gov, at <http://www.regulations.gov>. A direct link to that docket is available on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 139. You may also reach the relevant docket through the Regulations.gov search page at <http://www.regulations.gov>. For information on how to use Regulations.gov, click on the site's "Help" tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

### **Regulatory Flexibility Act**

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### **Executive Order 12866**

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, no regulatory assessment is required.



## **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this proposed rule.

## **List of Subjects in 27 CFR Part 9**

Wine.

## **Proposed Regulatory Amendment**

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

### **PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### **Subpart C—Approved American Viticultural Areas**

2. Subpart C is amended by adding § 9.\_\_\_\_ to read as follows:

#### **§ 9.\_\_\_\_ Upper Hiwassee Highlands.**

(a) Name. The name of the viticultural area described in this section is “Upper Hiwassee Highlands”. For purposes of part 4 of this chapter, “Upper Hiwassee Highlands” is a term of viticultural significance.

(b) Approved maps. The 24 United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Upper Hiwassee Highlands viticultural area are titled:

- (1) Unaka, NC/TN, 1957; photorevised 1978;
- (2) McDaniel Bald, NC/TN, 1957; photoinspected 1976;
- (3) Marble, NC, 1938; photorevised 1990;

- (4) Andrews, NC, 1938; photorevised 1990;
- (5) Tipton, NC, 1957; photoinspected 1976;
- (6) Peachtree, NC, 1937; photorevised 1973;
- (7) Hayesville, NC, 1966; photorevised 1978; photoinspected 1987;
- (8) Shooting Creek, NC, 1957; photorevised 1990;
- (9) Rainbow Springs, NC, 1957; photorevised 1978;
- (10) Macedonia, GA/NC, 1988;
- (11) Hightower Bald, GA/NC, 1988;
- (12) Tray Mountain, GA, 1957; photorevised 1985;
- (13) Jacks Gap, GA, 1988;
- (14) Hiawassee, GA/NC, 1988;
- (15) Blairsville, GA/NC, 1988;
- (16) Cowrock, GA, 1988;
- (17) Coosa Bald, GA, 1988;
- (18) Neels Gap, GA, 1988;
- (19) Mulky Gap, GA, 1965;
- (20) Wilscot, GA, 1947;
- (21) Nottely Dam, GA/NC, 1988;
- (22) Culberson, NC/GA, 1988;
- (23) Persimmon Creek, NC, 1957; photorevised 1978; and
- (24) Isabella, TN/NC, 1957; photorevised 1978.

(c) Boundary. The Upper Hiwassee Highlands viticultural area is located in Cherokee and Clay Counties in North Carolina and in Towns, Union, and

Fannin Counties in Georgia. The boundary of the Upper Hiwassee Highlands viticultural area is as follows:

(1) The beginning point is in Cherokee County, North Carolina, on the Unaka map at the intersection of the northwestern end of the Hiwassee Dam and an unnamed light-duty road known locally as Hiwassee Dam Access Road.

(2) From the beginning point, proceed northwesterly on Hiwassee Dam Access Road approximately 4.2 miles to the road's intersection with an unnamed light-duty road known locally as Joe Brown Highway; then

(3) Proceed northeasterly on Joe Brown Highway approximately 1.4 miles to the highway's intersection with an unnamed light-duty road known locally as Burrell Mountain Road; then

(4) Proceed east-northeasterly along a straight line (drawn from the intersection of Joe Brown Highway and Burrell Mountain Road to the peak of Bird Knob) to the point where the line intersects the 2,400-foot elevation line west of Bird Knob; then

(5) Proceed initially southerly and then easterly along the meandering 2,400-foot elevation line and continue to follow the elevation line in an overall clockwise direction through Cherokee and Clay Counties, North Carolina, and then Towns and Union Counties, Georgia, crossing over as necessary the McDaniel Bald, Marble, Andrews, Topton, Peachtree, Hayesville, Shooting Creek, Rainbow Springs, Macedonia, Hightower Bald, Tray Mountain, Jacks Gap, Hiwassee, Blairsville, Cowrock, Coosa Bald, Neels Gap, and Mulky Gap

maps and ending on the Wilscot map, to the 2,400-foot elevation line's intersection with the Union–Fannin County boundary line at Skeenah Gap; then

(6) Proceed northerly along the meandering Union–Fannin County boundary line, crossing over the Mulky Gap and Nottely Dam maps and onto the Culberson map, to the summit of High Top Mountain; then

(7) Proceed northwesterly in a straight line approximately one mile to the intersection of two unnamed light-duty roads known locally as Cutcane Road and Mt. Herman Road, near Mt. Herman Church; then

(8) Proceed northwesterly on Mt. Herman Road approximately one mile to the road's intersection with State Spur 60 (Murphy Highway); then

(9) Proceed southwesterly on State Spur 60 (Murphy Highway) approximately 2 miles to the road's intersection with an unnamed light-duty road known locally as Knollwood Road; then

(10) Proceed northwesterly in a straight line approximately 1.75 miles to the summit of Watson Mountain; then

(11) Proceed northeasterly in a straight line approximately 2.15 miles, crossing onto the Persimmon Creek map, to the line's intersection with the wagon and jeep track at the southern-most summit of Vance Mountain in Cherokee County, North Carolina; then

(12) Proceed north-northwesterly along the wagon and jeep track approximately 0.8 mile to the track's intersection with a marked foot trail near the 2,200-foot elevation line on the northern spur of Vance Mountain; then

(13) Proceed north-northwesterly along the foot trail approximately 0.5 mile to the trail's intersection with an unnamed road known locally as Wallace Road, and then continue north-northwesterly along Wallace Road approximately 0.4 mile to the road's intersection with U.S. Highway 64 near Hothouse; then

(14) Proceed westerly along U.S. Highway 64 approximately one mile to the highway's intersection with a marked northerly foot trail at Nealy Gap; then

(15) Proceed northerly along the marked foot trail, briefly crossing to and from the Isabella map, to the foot trail's intersection with an unnamed unimproved road, and then continue northerly on the unimproved road to its intersection with a second unnamed unimproved road known locally as Charles Laney Road, a total approximate distance of 0.75 mile; then

(16) Proceed northwesterly on the unnamed unimproved road known locally as Charles Laney Road, crossing onto the Isabella map, to the road's end, and then continue north-northwesterly on a marked foot trail to the trail's intersection with a wagon and jeep track at Wolfpen Gap, a total approximate distance of one mile; then

(17) Proceed easterly and then northeasterly along the wagon and jeep trail, crossing onto the Persimmon Creek map, to the 3,284-foot benchmark (MLB 1514) on Payne Mountain, then continue northeasterly on the wagon and jeep trail (which is partially marked as a foot trail) along the ridge line of Payne Mountain to the peak of Harris Top, then continue north-northeasterly on the wagon and jeep trail to the peak of Beaver Top, a total approximate distance of 2.75 miles; then

(18) Proceed northeasterly approximately 0.25 mile on the wagon and jeep trail to the point where the trail turns sharply to the southeast at a summit within the 2,480-foot elevation line on the western shoulder of Indian Grave Gap; then

(19) Proceed north in a straight line approximately 0.95 mile to the summit of Canedy Mountain, and then continue north-northwest in a straight line approximately 0.45 mile to the line's intersection with an unnamed light-duty road known locally as Candy Mountain Road; then

(20) Proceed east-northeasterly on Candy Mountain Road approximately 0.8 mile to the 1,740-foot benchmark (BM HR 116); then

(21) Proceed northerly in a straight line approximately 1.2 miles to the southern-most peak of Ghormley Mountain (within the 2,440-foot elevation line); then

(22) Proceed north-northeast in a straight line approximately 1.3 miles to the intersection of an unnamed light-duty road known locally as Lower Bear Paw Road and an unnamed unimproved road just south of Reids Chapel (the chapel is shown along the southern edge of the Unaka map); then

(23) Proceed northerly on Lower Bear Paw Road approximately 0.35 mile, crossing onto the Unaka map, to the road's intersection with an unnamed medium-duty road known locally as Hiwassee Dam Access Road; then

(24) Proceed easterly and then northerly along Hiwassee Dam Access Road approximately 2.9 miles, returning to the beginning point at the northwestern end of Hiwassee Dam.

Signed: July 3, 2013.

**John J. Manfreda,**  
Administrator.

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